IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.19671 of 2007
and
M.P.No.1 of 2007

Director (Regional),
Department of Light houses &
Lightships, Deep Bhavan,
No.5/20, Jaffar Syrang Street,
Chennai - 1. .. Petitioner

Versus

1. Randhir Singh

2. The Registrar,
   Central Administrative Tribunal,
   Chennai Bench,
   Chennai 104. .. Respondents

Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari to call for the concerned records relating to the order of the Central Administrative Tribunal, Chennai Bench in O.A.No.653 of 2006 dated 14.11.2006, and quash the same.

For petitioner : Mr.B.Shanthakumar

For R1 : Mr.Randhir Singh (Party-in-person)

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O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The petitioner is aggrieved against the order of the Central Administrative Tribunal dated 14.11.2006 passed in O.A.No.653 of 2006. After notice to the first respondent, he appeared in person and contested this writ petition.

2. We heard the learned counsel appearing for the petitioner as well as the first respondent(Party-in-person).

3. The brief facts which are required to be stated are that the first respondent who was employed as a Senior Radio Technician underwent sterilization operation in the year 1990. As per the Rules prevailing in the petitioner Organisation, the first respondent was entitled to payment of special allowance in the form of grant of special increment which was treated as personal pay. Such special allowance was granted under Paragraph 11 of FR 27 which provided that the rate of Personal Pay would be equal to the amount of the next increment due at the time of grant of the concession and the same would remain fixed during the entire service. The same was granted to the first respondent with effect from February 1990. After the implementation of the Fifth Pay Commission, based on the recommendation of the said Commission, a revision in the payment of Personal Pay called Family Planning Allowance was made. The said revision came to be made by way of an Office Memo in Memorandum No.7(39)-E.III/79 dated 04.12.1979. As per the said memorandum, the special increment in the form of Personal Pay to the Central Government employees who had undergone sterilization prior to 01.01.1996 and were drawing pay in the pre-revised pay scales was revised so as to be equivalent to the lowest rate of increment applicable in the relevant revised scales of pay corresponding to the pay scale of the post against which the employee concerned had initially earned the Personal Pay in the applicable pre-revised scale of pay.

4. The first respondent was granted upgradation in the year 2003. By virtue of such upgradation, the first respondent was fitted in higher scale of pay. Further, by virtue of the stipulation contained in O.M.No.7 dated 04.12.1979, the revised Family Planning Allowance which was earlier paid at the rate of Rs.40/- came to the increased to Rs.125/- as was applicable to the relevant revised scale of pay payable to the first respondent. The said revised Family Planning Allowance at the rate of Rs.125/- was also paid to the first respondent from 01.01.1996. The first respondent however made a claim that the revised Family Planning Allowance should have been paid at the rate of Rs.175/- from the date of increment applicable to the special grade scale of pay in which the first respondent

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was fitted in the year 2003, subsequent to his upgradation. When the same was not acceded to by the petitioner, the first respondent approached the Central Administrative Tribunal by filing O.A.No.344 of 2004. The Tribunal also allowed the claim of the first respondent and directed the respondents therein to pay the special allowance at the rate of Rs.175/- per month from the due date. The order of the Tribunal was challenged by the respondents therein including the petitioner herein in W.P.No.38491 of 2005. However, during the pendency of the said writ petition, the petitioner by Office Order dated 20.10.2004 paid the sum of Rs.175/- without prejudice to their contentions in the writ petition. They also paid the difference between Rs.125/- and Rs.175/- for the period between 01.01.1996 and 20.10.2004. The said Office Order however made it clear that that payment was subject to the outcome of the appeal being filed by the petitioner. The petitioner's earlier writ petition in W.P.No.38491 of 2005 came to be disposed of by order dated 31.03.2006. The Division Bench after noting that the Tribunal failed to consider the relevant Rules providing for the increase in the payment of family special allowance, ultimately remitted the matter back to the Tribunal for fresh consideration of all the issues on merits. The writ petition was disposed of on that basis.

5. On remand, the Tribunal passed orders on 14.07.2006. It has held as under in paragraph No.8:

> "From the above it would be seen that Personal Pay on the date when the applicant underwent sterilization namely 20.02.1990 he was holding the post of Radio Technician in the scale of Rs.1400-40-1800-EB-50-2300. The corresponding pay scale w.e.f. 1.1.1996 is Rs.4500-125-7000. Therefore, the Personal Pay has to be given to the applicant only Rs.125/- p.m. there is no scope for claim of applicant for increment given to the upgraded scale of pay it would be seen from the office order that the applicant was granted the revised scale of 21.5.98 at Rs.4500-7000 and the upgraded scale by office order dated 18.3.2003. The corresponding pay scale of Rs.1400-2300 is Rs.4500-7000. Therefore, the applicant would be entitled only Rs.125/- as Personal Pay and not Rs.175/- as claimed by him. Hence no grounds are made to grant the relief prayed for. The O.A. Fails and is dismissed. No costs."

6. Thus the Tribunal has held that the first respondent was only entitled to Rs.125/- per month and not Rs.175/- per month as claimed by him. In the light of the order of the Tribunal dated 14.07.2006, the petitioner referring to their earlier Office Order dated 20.10.2004 wanted to recover the excess payment made from 01.01.1996 onwards, by passing another Office Order dated 08.08.2006. Aggrieved against the same, the first respondent preferred the present O.A.No.653 of 2006 before the Tribunal. The said Original Application was resisted by the petitioner by filing a counter affidavit. The Tribunal has now passed orders dated 14.11.2006 holding as under in paragraph No.13:

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"13. The submissions of the applicant that when lakhs of rupees were paid on erroneous construction of rules, the excess payment so made were return off. The same benefit ought to have been extended to him also. We find much force in the said submission."

The Tribunal held that the excess payment was only Rs.6,348/- and that a sum of Rs.1,058/- had already been recovered and that no further recovery should be made. The Tribunal accordingly set aside the order dated 08.08.2006.

7. Assailing the order, Mr.Shanthakumar, learned counsel for the petitioner contended that when the Tribunal had turned down the claim of the first respondent by its order dated 14.07.2006 in O.A.No.344 of 2004 that he was not entitled to the Family Special Allowance at the rate of Rs.175/- but was entitled at the rate of Rs.125/- per month and when the said payment was made by the petitioner by its office order dated 20.10.2004 by making it clear such payment would be subject to the outcome of the appeal being filed, the Tribunal ought not to have interfered with the action of the petitioner seeking to recover the excess payments made. Learned counsel also contended that the reliance placed upon by the Tribunal to the decisions reported in 1994 (1) SLR 827 [Shyam Babu Verma vs. Union of India] and 1995 SCC (L&S) 248 [Sahib Ram vs. State of Haryana] are not applicable to the facts of this case.

8. As far as the contention based on waiver ordered in respect of certain excess payment to the Directors and the Deputy Directors, the learned counsel contended that one wrong action cannot be quoted as a precedent for committing another wrong. As against the above submissions, Mr.Randhir Singh, the party who appeared in person submitted at the outset that the deponent to the affidavit itself is not competent to be filed in this writ petition and therefore, the writ petition itself is not maintainable.

9. As far as the merits of the order is concerned, Mr.Randhir Singh would contend that since the Tribunal has relied upon the orders of the Hon'ble Supreme Court, the same should not be interfered with. He would reiterate that since the Union of India have not bothered to recover lakhs of rupees which were paid in excess to higher authorities for which they were not legally entitled to, in the same line of reasoning, Rs.6,348/- paid to the first respondent should also be waived.

10. After hearing the learned counsel for the petitioner as well as the party in person, we are not able to appreciate the stand of the first respondent, party-in-person. As far as the objection relating to the competency of the deponent to the affidavit, we find that he has sworn to the affidavit as the Director (Regional), Department of Light Houses and Lightships, Chennai. After the order of remand passed in W.P.No.38491

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of 2005 dated 31.03.2006, O.A.No.344 of 2004 was revived in which also the present petitioner figured as the third respondent. Subsequently, when the order dated 08.08.2006 was passed by the present petitioner as the Director (Regional), the said order was challenged by the first respondent before the Tribunal in Original Application No.653 of 2006, wherein, the present petitioner alone has been arrayed as the respondent. In the above stated circumstances, we are not able to appreciate the present objection of the first respondent as to the competency of the deponent of the affidavit who in his capacity as the Director (Regional) has sworn to the affidavit filed in support of this writ petition. Therefore, we reject the said contention at the very outset.

11. As far as the merits of the order is concerned, the Tribunal placed reliance on the judgments reported in 1994 (1) SLR 827 [cited supra] and 1995 SCC (L&S) 248 [cited supra] In the former case, the very decision disclose that the concerned workmen were paid certain payments by way of higher scale of pay for no fault of theirs. Therefore, when the said higher payment was sought to be recovered, the Hon'ble Supreme Court held that when the workmen were not at fault for any excess payment made to them, no recovery can be permitted to be made. In the subsequent case, here again it was held that the upgraded pay scale given to the workmen was due to wrong construction of relevant order by the authority concerned without any misrepresentation to the employer and therefore the same cannot be recovered. The Hon'ble Supreme Court therefore, held that when the workmen did not make any misrepresentation and the excess payment by way of upgraded pay scale was made by a wrong construction of relevant order by the authority concerned, the employee should not be penalised by making recovery at a later point of time. In such circumstances, having regard to the facts involved in those two cases, we find that those principles will have no application to the facts of the present case. In the case on hand, the first respondent was paid the correct Family Special Allowance at the rate of Rs.125/- per month. It was the first respondent not being satisfied with the correct payment made, made a claim and also approached the Tribunal. Though initially the Tribunal in its order dated 24.08.2004 countenanced the claim of the first respondent as rightly decided by this Court in W.P.No.38491 of 2005, while passing the said order on 24.08.2004 in O.A.No.344 of 2004, the Tribunal failed to consider the relevant Rules. However, the respondents therein paid the Family Special Allowance at the rate of Rs.175/- per month through its Office Order dated 20.10.2004, while challenging the said order of the Tribunal, without prejudice to its rights as the Office order itself made it clear that such payment was being made subject to the outcome of the appeal to be filed as against the order of the Tribunal dated 24.08.2004. Therefore, when ultimately after remand, when the Tribunal by its present order dated 14.07.2006 finally decided that the first respondent was entitled to Family Special Allowance only at the rate of Rs.125/- per month and not at Rs.175/- per month, it cannot be held that such excess payment was made due to any fault on the part of the petitioner. On the other hand, but for the claim made by the first respondent such excess

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payment would have never been paid by the petitioner. Therefore, the reliance placed upon by the Tribunal on the above decisions of the Hon'ble Supreme Court cannot be sustained.

12. As far as the reference to certain exorbitant amounts paid by applying a higher pay scale to the Directors and Deputy Directors are concerned, it has to be stated that such action of the authorities in waiving the recovery of such huge sums paid to higher officials can never be approved of. But certainly on that score, the Tribunal ought not to have held that the same wrong action of the Union of India should be extended to the first respondent also when it comes to the question of recovery of the excess payment made. In this context, it will be appropriate to refer to the decision of the Hon'ble Supreme Court reported in (2003)5 SC 437 [Union of India and another vs. International Trading Company and another], wherein the Hon'ble Supreme Court has made it clear that one wrong order cannot be a precedent for passing another wrong order. Paragraph No.13 of the said judgment is relevant for our present purpose, which reads as follows:

> "What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."
>
> (Emphasis added)

Therefore, the conclusion of the Tribunal in countenancing the claim of the first respondent for not permitting the petitioner to recover the excess payment made is not justified and therefore, we are unable to sustain the order of the Tribunal on that score as well.

13. We are not able to find any illegality in the order of the petitioner dated 08.08.2006 seeking to recover the excess payment made from 01.01.196 from the first respondent. The writ petition therefore is

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bound to succeed. The order of the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

gms

To
The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 104.
+ 1 CC To Mr. B.Shanthakumar, Advocate SR NO.40693

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